

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 94-712-C - ORDER NO. 95-1459 ✓
AUGUST 31, 1995

IN RE: Application of American Communications)	ORDER
Services, Inc. for a Certificate of Public)	GRANTING
Convenience and Necessity to Provide)	CERTIFICATE
Private Line and Special Access Services)	AND
within the State of South Carolina.)	ESTABLISHING
)	A TASK FORCE

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Application of American Communications Services, Inc. (ACSI or the Company) for authority on behalf of its subsidiaries to provide Private Line and Special Access Services within the State of South Carolina. ACSI's three subsidiaries in South Carolina are American Communications Services of Greenville, Inc., American Communications Services of Columbia, Inc., and American Communications Services of Charleston, Inc.

By letter, the Commission's Executive Director instructed the Company to cause to be published a prepared Notice of Filing, one time, in newspapers of general circulation in the area affected by the Company's Application. The Notice of Filing indicated the nature of the Company's Application and advised all interested parties desiring participation in the scheduled proceeding of the manner and time in which to file the appropriate pleadings. The

Company furnished affidavits demonstrating that the Notice had been duly published.

Petitions to Intervene were received from Southern Bell Telephone & Telegraph Company (Southern Bell), the Consumer Advocate for the State of South Carolina (the Consumer Advocate), the South Carolina Telephone Association (SCTA), South Carolina Telephone Coalition (SCTC), AT&T Communications of the Southern States, Inc. (AT&T), MCI Telecommunications, Incorporated (MCI), and GTE South, Inc. (GTE), which filed a Petition to Intervene Out-of-Time. Subsequently, GTE's Petition to Intervene Out-of-Time was granted, and the SCTA moved to withdraw its intervention, which was also granted.

By its Application, ACSI seeks Certificates of Public Convenience and Necessity for its subsidiaries to provide intrastate Special Access and Private Line Services in South Carolina. During the hearing, the Company amended its Application to seek this authority only within those areas served by Southern Bell.

Following extensive discovery, the Commission held a public hearing on the Company's Application on June 15 and 16, 1995 with the Honorable Rudolph Mitchell, presiding. ACSI was represented by Russell B. Shetterly, Esquire, Knox White, Esquire, Riley Murphy, Esquire, and Michelle D. Shine, Esquire; Southern Bell was represented by Harry M. Lightsey, III, Esquire, William F. Austin, Esquire, and Nancy White, Esquire; the Consumer Advocate was represented by Elliott F. Elam, Jr., Esquire, and Hana

Pokorna-Williamson, Esquire; the SCTC and GTE were represented by M. John Bowen, Jr., Esquire, and Margaret Fox, Esquire, respectively; MCI was represented by John M.S. Hoefer, Esquire; AT&T was represented by Francis P. Mood, Esquire, Roger Briney, Esquire, and Henry J. White, Esquire; and the Commission Staff was represented by F. David Butler, General Counsel.

ACSI presented the direct testimony of Mark Fuller and Craig M. Clausen. Southern Bell presented the testimony of Jerry D. Hendrix. (Southern Bell had previously filed the testimony of David Denton. ACSI moved to strike the testimony, which was granted by Commission Order.) The SCTC presented the testimony of H. Keith Oliver. AT&T presented the testimony of Mike Guedell. ACSI presented the rebuttal testimony of Mark Fuller and Craig M. Clausen. The Commission Staff presented the testimony of R. Glenn Rhyne, Jr.

ACSI is a competitive access provider (CAP) which seeks to compete with local exchange companies (LECs) for the provision of certain local services. In the present case, ACSI requests a Certificate of Public Convenience and Necessity to compete with Southern Bell in its territories for Private Line and Special Access Service customers, a limited portion of Southern Bell's overall business.

Mark Fuller, Vice-President of ACSI, adopted the pre-filed testimony of Richard Kozak as his own. Fuller testified that ACSI has the financial, technical, and managerial resources, the experience, and the ability to provide the services described in

the Application. Fuller testified that ACSI has either constructed or is in the process of constructing fiber optic cable rings in the Greenville/Spartanburg area, the City of Columbia, and the City of Charleston. Fuller testified that the service was in the public interest, and that there would be numerous public benefits of ACSI's proposed intrastate service, not the least of which was competition for the service with Southern Bell.

Craig M. Clausen testified on direct examination, that in this opinion, competition for Private Line and Special Access Services would engender significant benefits to telecommunications consumers in South Carolina. Specifically, these would include route diversity, network reliability, enhanced security, redundancy, price competition, and expanded choice between services and providers. Clausen testified that Private Line Service is simply a non-switched dedicated telecommunications connection between two points.

Southern Bell presented the testimony of Jerry D. Hendrix, who testified, among other things, that approval of ACSI's Application will have an adverse impact on the revenues of existing services provided by Southern Bell. Some of the services, according to Hendrix, which would realize an immediate impact are switched access, special access, private line and intraLATA toll. Hendrix testified that revenues from these services provides support to basic local service, and any significant revenue losses could place upward pressures on basic service rates.

H. Keith Oliver testified for the SCTC, and testified that any consideration of ACSI's certificate should be postponed until a number of issues are addressed. These issues include rate rebalancing, depreciation deregulation, universal service, universal service funding, reciprocal compensation, unbundling, carrier of last resort, establishment of equitable interconnection/access rates, protection of small and/or rural telecommunications users, regulatory parity, number portability, Lifeline, and service and customer standards.

AT&T presented the testimony of Mike Guedell. Guedell challenged the testimony of Jerry Hendrix of Southern Bell, and stated that granting of the ACSI Application would not affect the intraLATA revenues of Southern Bell. Guedell stated that Hendrix had stated that approval of ACSI's Application would place \$43 million in jeopardy. However, according to Guedell, the estimate included \$16 million in interstate revenues, which will not be affected by the Commission's decision, and \$9 million of intraLATA toll, which has already been put at risk by previous decisions of the Commission. Guedell stated that after subtracting these components, the "jeopardy" Southern Bell is exposed to is reduced to \$18 million or 2.6% of its total South Carolina revenues.

Staff presented the testimony of R. Glenn Rhyne, Jr. Rhyne recommended that the Application of ACSI in this Docket be approved if certain criteria were met, and that a committee or task force be formed to address the issues described by H. Keith Oliver in his testimony for the SCTC. Rhyne stated that in order

to get the certificate, however, ACSI should demonstrate that it can offer the services which can benefit the consumers of South Carolina, and, at the same time, be willing to work in good faith through a collaborative process, during which the major issues related to the Application are identified, addressed, and efforts made for a resolution. According to Rhyne, ACSI is the first competitive access provider to apply to operate on an intrastate basis in South Carolina, and thus must assume the responsibility to attempt to address the related issues and problems in an effort to establish the framework for regulation of future CAP's. According to Rhyne, competition can create difficult questions and problems which have no clearly distinguishable right or wrong answer. These can be effectively dealt with through a sincere cooperative approach of all impacted parties, according to Rhyne. Rhyne further recommends that it would be in the best interest of all the impacted parties to participate in such a process and to seek to reach a balanced solution.

The Commission has examined the entire record in this matter and believes that the requested Certificate should be granted, with qualifications which appear infra in this Order. The evidence shows that the granting of the Certificate certainly seems to be in the public interest. As several witnesses noted, competition has generally brought lower rates and better service in a number of industries. Further, the percentage of Southern Bell's revenue that may be potentially affected is small. We believe that the granting of the certificate will have a minimal

effect on local rates. In addition, we agree with the testimony of ACSI witness Craig Clausen, in that we believe that the granting of the requested Certificate would provide route diversity, network reliability, enhanced security, redundancy, price competition, and expanded choice between services and providers.

Southern Bell raises the issue as to whether or not two predivestiture cases affect the present case. In the TSI case, Docket No. 81-28-C, presented to this Commission, the Commission applied two criteria which had to be met before a Certificate was issued: (1) the prevention of wasteful duplication of facilities and services, and (2) the protection of the consuming public from receiving inadequate service. These criteria were also utilized by this Commission in the later GTE docket, Docket No. 84-10-C.

ACSI states in its post-hearing Brief that it has met the standards applied in these cases, although these standards should not apply to the present case. First, according to ACSI, the Orders were issued before divestiture, and that telecommunications market has made dramatic changes since that time. Second, the authority sought and granted TSI was much broader in scope than that sought by ACSI in this case. TSI was given the unqualified right to compete with a LEC throughout the State in its case. No limitation were placed on TSI's service offerings. ACSI notes that it seeks only to provide intrastate Special Access and Private Lines Services. If the Commission determines that TSI standards do apply to the present case, ACSI alleges that it has

met those standards. According to ACSI, its Application will not lead to wasteful duplication, in that ACSI's network construction is nearly all underground in the downtown areas, and, to the extent ACSI may use aboveground facilities, it generally does so using existing poles and towers. Therefore, no wasteful duplication appears. Second, according to ACSI's witnesses, the granting of the Certificate will not cause customers to receive inadequate service. Competition generally leads to increased service quality and decreased rates, according to ACSI.

The Commission believes that even though the TSI standards were established before divestiture in somewhat different cases, the Commission must consider these standards before granting the authority requested herein. Wasteful duplication and the provision of inadequate service are important standards, and are as important today as they were prior to divestiture. However, the Commission agrees that the evidence in this case reveals that ACSI has met the standards as stated in the TSI and GTE cases, for the reasons espoused in ACSI's post-hearing Brief and in its testimony.

The Commission is quite concerned, however, about the issues raised in the testimony of H. Keith Oliver for the SCTC, and the additional issues raised by the Staff through R. Glenn Rhyne, Jr. We note that no party actually opposes the granting of the Certificate. However, there is a dispute in this case as to when ACSI's Certificate should be granted; prior to a consideration of these issues, or only after consideration of the issues. The

Commission believes that a compromise solution should be established.


Therefore, the Commission grants the Certificate as amended by ACSI, with an effective date of February 1, 1996. At this time, a task force shall be established, made up of the parties in this proceeding, to address the issues raised during the proceeding, especially those issues raised by the testimony of Keith Oliver and Glenn Rhyne. All parties, including ACSI, are expected to negotiate in good faith in an effort to resolve these issues. The Commission Staff shall coordinate this task force. The task force report is to be presented to the Commission at the first regularly scheduled business meeting after January 1, 1996. The Commission reserves the right to reconsider the effective date of the authority granted, and to take appropriate action, if parties do not negotiate the issues in good faith. The Commission believes that this solution is best for all parties concerned. The Commission reiterates that it reserves the right to reconsider the effective date of the authority granted, and to take appropriate action if the parties do not negotiate the issues in good faith on the issues in this case.

The Company, on behalf of its subsidiaries, shall amend its proposed tariff to conform with the Commission's Rules and Regulations.

DOCKET NO. 94-712-C - ORDER NO. 95-1459
AUGUST 31, 1995
PAGE 10

This Order shall remain in full force and effect until
further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)